

APPEAL NO. 010671

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 13, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a repetitive trauma injury while in the course and scope of employment; that the date of injury is _____; that the respondent (carrier) and employer are relieved of liability under Section 409.002; and that the claimant does not have disability. The claimant appealed and the carrier responded.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that the claimant did not sustain a repetitive trauma injury while in the course and scope of employment; that the date of injury is _____; that the carrier and employer are relieved from liability under Section 409.002; and that the claimant does not have disability. Section 401.011(36) provides that a repetitive trauma injury means damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment. Section 409.001 provides that if the injury is an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment.

There is conflicting evidence in this case. The claimant claimed he injured his lower back shoveling dirt into a ditch over the course of several days in _____ while working for the employer. The hearing officer found that the claimant did not sustain any injury at work in _____, that the claimant did not timely report the alleged injury to the employer, and that the claimant did not have good cause for failing to timely report the alleged injury to his employer. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16). The hearing officer's determinations are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The decision and order of the hearing officer are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge